

**SUPREME COURT MINUTES
THURSDAY, NOVEMBER 5, 1998
SAN FRANCISCO, CALIFORNIA**

S009522 People, Plaintiff and Respondent

v.

Lester Robert Ochoa, Defendant and Appellant

The judgment is affirmed.

Mosk, J.

We Concur:

George, C.J.

Kennard, J.

Baxter, J.

Werdegar, J.

Chin, J.

Brown, J.

S062739 People, Plaintiff and Respondent

v.

Kenneth D. Davis, Defendant and Appellant

[T]he judgment of the Court of Appeal is affirmed.

Mosk, J.

We Concur:

George, C.J.

Kennard, J.

Baxter, J.

Werdegar, J.

Chin, J.

Brown, J.

S064794 In re Lester Robert Ochoa
 on

Habeas Corpus

Petition for writ of habeas corpus denied.

The claim entitled ‘newly discovered evidence supports factual defenses at both the guilt and penalty phases’ (appearing at pages

11–17 of the petition) is denied on the merits. In addition, it is barred under *In re Waltreus* (1965) 62 Cal.2d 218, 225.

The claim entitled ‘perjured testimony during the guilt phase’ (appearing at pages 18–20 of the petition) is denied on the merits. In addition, it is barred under *Waltreus, supra*.

The claim entitled ‘prosecutorial misconduct during the guilt phase’ (appearing at pages 21–24 of the petition) is denied on the merits. In addition, it is barred under *Waltreus, supra*.

The claim entitled ‘ineffective assistance of counsel during the guilt phase’ (appearing at pages 25–52 of the petition) is denied on the merits.

The claim entitled ‘petitioner is actually innocent of counts I through XIII’ (appearing at pages 53–56 of the petition) is denied on the merits. In addition, to the extent that it reasserts a claim that was raised and rejected on appeal, it is barred under *Waltreus, supra*.

The claim entitled ‘ineffective assistance of counsel during jury selection’ (appearing at pages 57–68 of the petition) is denied on the merits.

The claim entitled ‘prosecutorial misconduct during the penalty phase’ (appearing at pages 69–73 of the petition) is denied on the merits.

The claim entitled ‘ineffective assistance of counsel relating to the prosecutor’s threat to use the death of petitioner’s child as an aggravating factor’ (appearing at pages 74–76 of the petition) is denied on the merits.

The claim entitled ‘other ineffective assistance of counsel during the penalty phase’ (appearing at pages 77–118 of the petition) is denied on the merits.

The claim entitled ‘denial of the right to full consideration of mitigating evidence by the sentencing jury’ (appearing at pages 119–120 of the petition) is denied on the merits.

The claim entitled ‘ineffective assistance of expert witnesses’ (appearing at pages 121–124 of the petition) is denied on the merits.

The claim entitled ‘juror misconduct’ (appearing at pages 125–127 of the petition) is denied on the merits. In addition, to the extent that it reasserts a claim that was raised and rejected on appeal, it is barred under *Waltreus, supra*.

The claim entitled ‘denial of full and fair state review due to lack

of investigative funds' (appearing at pages 128–132) is denied on the merits.

The claim entitled 'execution after prolonged confinement under sentence of death' (appearing at pages 133–135 of the petition) is denied on the merits. "Insofar as any claim asserts ineffective assistance of immediately preceding appellate and habeas corpus counsel, it is denied solely on the merits. (*In re Robbins* (1998) 18 Cal.4th 770, 815, fn. 35.)

Mosk, J., and Brown, J., would deny the petition solely on the merits.

2nd Dist. Huell Howser, Appellant
B123336 v.
Div. 7 City of Long Beach et al., Respondents
S074472 Application for stay and petition for review DENIED.

S008005 People, Respondent
v.
Charles D. Riel, Appellant
On application of respondent and good cause appearing, it is ordered that the time to serve and file respondent's brief is extended to and including December 1, 1998.

S069793 People, Respondent
v.
James Thomas Williams, Appellant
On application of respondent and good cause appearing, it is ordered that the time to serve and file respondent's reply brief on the merits is extended to and including November 20, 1998.

S072082 In re Donald Ray Millwee
on
Habeas Corpus
On application of respondent and good cause appearing, it is ordered that the time to serve and file respondent's informal response to the petition for writ of habeas corpus is extended to and including December 4, 1998.